MFP Fire Protection, Inc. *and* Road Sprinkler Fitters Local No. 669, U.A., AFL-CIO. Case 27-CA-13246

July 31, 2002

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

On August 28, 1995, the National Labor Relations Board issued a Decision and Order in this proceeding, in which it found, inter alia, that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating its bargaining relationship with Road Sprinkler Fitters Local No. 669, U.A., AFL-CIO, and by making unilateral changes in its employees' wages and other conditions of employment. The Board ordered the Respondent, inter alia, to restore the terms and conditions of employment established by the collective-bargaining agreement in effect immediately prior to April 1, 1994, and to make whole bargaining unit employees and the union benefit funds for any losses they suffered as a consequence of the Respondent's unilateral changes. On December 3, 1996, the United States Court of Appeals for the Tenth Circuit enforced the Board's Order.

A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 27 issued a compliance specification on February 6, 1998. Thereafter, the Respondent timely filed an answer and an amended answer to the compliance specification.

On December 15, 2000, the Regional Director for Region 27 issued an amended compliance specification. On January 31, 2001,³ the Respondent timely filed an answer to the amended compliance specification.

On January 31, the General Counsel notified the Respondent that its answer to the amended compliance specification did not comply with the requirements of Section 102.56 of the Board's Rules and Regulations. The letter advised the Respondent that unless a proper amended answer was filed by the close of business on February 2, a Motion for Summary Judgment would be filed. The Respondent did not file an amended answer to the amended compliance specification.

On February 15, the General Counsel filed with the Board a Motion to Strike Respondent's Answer and for Summary Judgment. On February 22, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's mo-

tion should not be granted. On March 13, the Respondent filed a response to the Notice to Show Cause to which it attached its amended answer to the original compliance specification. On March 26, the General Counsel filed a reply to the Respondent's response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following Ruling on Motion to Strike Respondent's Answer and for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

- (b) Contents of answer to specification.—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.
- (c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure to so deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

¹ 318 NLRB 840.

² 101 F.3d 1341.

³ All subsequent dates refer to 2001 unless specified otherwise.

1. Positions of the parties

Relying on the above rules, the General Counsel seeks summary judgment on the entire amended compliance specification because the Respondent's answer provides only general denials and fails to reveal the basis on which the Respondent disagrees with the amended specification's allegations.

In its response to the Board's Notice to Show Cause, the Respondent argues that the answer to the amended compliance specification, the amended answer to the original compliance specification, and other documents it submitted to the Regional Office provide sufficiently specific information to warrant a hearing before an administrative law judge.

In his reply, the General Counsel argues that the Board should not allow the Respondent's response to the Notice to Show Cause to cure the defects in its answer to the amended compliance specification. Among other things, the General Counsel urges that the attachments to the Respondent's response, in particular the amended answer to the original compliance specification, should not be treated as part of the answer to the amended compliance specification.

2. Analysis and Conclusions

In its answer to the amended compliance specification, the Respondent generally denied the allegations of the specification. The General Counsel filed his Motion for Summary Judgment based on the answer to the amended specification. The Respondent's answer to the amended specification, considered in isolation, is deficient because the Respondent generally failed, as required by our rules, to reveal the basis on which the Respondent disagrees with the amended specification's allegations. If we were faced only with the answer to the amended compliance specification, we would grant the General Counsel's Motion for Summary Judgment.

It is well settled, however, that a respondent may properly cure defects in its answer before a hearing either by an amended answer or a response to a Notice to Show Cause. *Mining Specialists, Inc.*, 330 NLRB 99, 101 fn. 12 (1999); *Ellis Electric*, 321 NLRB 1205, 1206 (1996); *Vibra-Screw, Inc.*, 308 NLRB 151, 152 (1992). In this case, the Respondent has filed a response to the Notice to Show Cause, which contains, as an attachment, the Respondent's amended answer to the original compliance specification. As the General Counsel essentially admits, the amended answer adequately states the basis for disagreeing with the original specification's allegations, setting forth in detail the Respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

The General Counsel acknowledges that in such cases as Vibra-Screw the Board has construed a response to a Notice to Show Cause as curing defects in an answer, but he claims that the instant case is distinguishable because the answer he seeks to strike is "wholly deficient," while in Vibra-Screw the original answer was "partially valid." The distinction the General Counsel attempts to draw, however, has no basis in Board precedent. Thus, in Coronet Foods, 316 NLRB 700 (1995), supplemented by 322 NLRB 837 (1997), enfd. in part 158 F.3d 782 (4th Cir. 1998), the Board denied a motion to strike a respondent's original answer to a compliance specification, even though that answer suffered from numerous defects, and "the Board usually strikes pleadings that substantially fail to comply" with the Board's rules. 316 NLRB at 701. Instead, the Board accepted the amended answers the respondent filed with the Board, including an amended answer filed with the response to the Notice to Show Cause. The Board reasoned that it has "freely permitted" the filing of amended answers "prior to the backpay hearing, or through responses to a Notice to Show Cause." Id. The General Counsel has cited no case to the contrary.

The General Counsel also contends that we should not consider the amended answer to the original compliance specification because the Respondent did not explicitly state that it was incorporating that answer in its answer to the amended compliance specification. It is undisputed, however, that the amended answer to the original compliance specification was attached to the Respondent's response to the Notice to Show Cause. Therefore, under the Board precedent cited above, the amended answer must be considered.

In addition, the General Counsel argues that we should ignore the amended answer to the original compliance specification because the amended specification differs significantly from the original specification and therefore that answer is "obsolete." Contrary to this assertion, our examination of the two documents reveals that the allegations of the amended specification are substantially the same as the allegations of the original compliance specification.⁴

Given that the Respondent has filed a valid answer to the original compliance specification, and that the allegations of the original compliance specification are sub-

⁴ The amended compliance specification changed some of the backpay periods slightly, amended the backpay amounts owed some of the previously-named discriminatees, amended the amounts owed to the Union's benefit funds, and added two discriminatees. (As indicated above, the Board's make-whole order in the underlying unfair labor practice proceeding applied to all bargaining unit employees, rather than a specific group of named employees.)

stantially the same as the allegations of the amended compliance specification, we find that it would be inappropriate to grant the General Counsel's Motion for Summary Judgment. See *Kolin Plumbing Corp.*, 337 NLRB 234, 235–236 (2001)(respondents' "failure to file an answer to the amended compliance specification does not negate their timely answer to the original specification" where allegations of the two specifications are "substantially the same"). See generally *Media One Inc.*, 313 NLRB 876 (1994) ("The Board will not grant summary judgment based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial.").

In sum, the Respondent's answer to the amended compliance specification was deficient. We shall, however, construe the Respondent's response to the Notice to Show Cause, with the attached amended answer to the original compliance specification, as an amended answer to the amended compliance specification. This amended answer is sufficiently specific under our rules to join the issues raised by the amended compliance specification.

Accordingly, we shall deny the General Counsel's Motion for Summary Judgment, and we shall order a hearing on the issues raised in the amended compliance specification.

ORDER

IT IS ORDERED that the General Counsel's Motion to Strike Respondent's Answer and for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 27 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning the issues raised in the amended compliance specification.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.